

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	Civil Action
	:	No. 05-11805-NMG
v.	:	
	:	
RICHARD F. SELDEN,	:	
	:	
Defendant.	:	
----- X		
RICHARD F. SELDEN,	:	
	:	
Plaintiff,	:	Civil Action
	:	No. 06-11807-NMG
v.	:	
	:	
UNITED STATES FOOD AND DRUG	:	<b>ORAL ARGUMENT</b>
ADMINISTRATION and ANDREW C.	:	<b><u>REQUESTED</u></b>
VON ESCHENBACH, in his official	:	
capacity as acting commissioner of the	:	
United States Food and Drug	:	
Administration,	:	
	:	
Defendants.	:	
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**RICHARD F. SELDEN’S MOTION TO COMPEL FDA DEPOSITIONS**

Pursuant to Fed. R. Civ. P. 1, 26, 30 and 37, and the Local Rules of this Court, Richard F. Selden (“Dr. Selden”), by his undersigned counsel, respectfully moves to compel the U.S. Food and Drug Administration and Andrew C. von Eschenbach, in his official capacity (collectively, the “FDA”), to produce James Kaiser, Dwaine Rieves, Marc Walton and Karen Weiss for deposition by Dr. Selden concerning the allegations in S.E.C. v. Selden, Civ. No. 05-11805-NMG (D. Mass.) (the “SEC Action”), at a mutually agreeable time and place, but in no event later than September 13, 2007 (the discovery cut-off in the

SEC Action). The grounds for this motion are set forth in the accompanying memorandum of law, submitted herewith.

**REQUEST FOR COSTS AND ATTORNEYS' FEES**

In light of the FDA's continuing obstructive conduct in response to Dr. Selden's discovery requests, including conduct that has "frustrated the fair examination" of the agency's witnesses, Dr. Selden requests, pursuant to Fed. R. Civ. P. 30(d)(3), that the FDA be ordered to pay his reasonable costs and attorneys' fees associated with this motion.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Dr. Selden respectfully requests a hearing on this motion.

**CERTIFICATION UNDER LOCAL RULES 7.1(A)(2) AND 37.1**

The undersigned hereby certifies that counsel for Dr. Selden has conferred with counsel for the FDA in a good faith effort to narrow the issues on this motion and has complied with Local Rules 7.1(A)(2) and 37.1.

Dated: February 19, 2007

/s/ Justin J. Daniels  
Justin J. Daniels

Dated: February 19, 2007  
Boston, Massachusetts

Respectfully submitted,

**CERTIFICATE OF SERVICE**

I, Justin J. Daniels, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 19, 2007.

Dated: February 19, 2007 /s/ Justin J. Daniels  
Justin J. Daniels

/s/ Thomas J. Dougherty  
Thomas J. Dougherty (BBO #132300)  
Justin J. Daniels (BBO #656118)  
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